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Effect of Granting Business Method Patents & an Analysis into CRI Guidelines

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ABSTRACT

Section 3(k) of the Patents Act, 1970 excludes mathematical and business methods, computer programmes per se *and algorithms from patentability. But it is not an absolute restriction. The 2002 Amendment Act added the suffix "*per se*" to computer programmes. Many judicial precedents have taken a progressive and positive view where a technical effect, contribution or advancement is involved. Since 2013, the Indian Patent Office has also issued four sets of Guidelines for Computer-Related Inventions (CRI), the most recent in July 2025, in an attempt to bring clarity to CRI patents. This paper undertakes a critical analysis of the CRI Guidelines, 2025. It analyses whether the Guidelines' treatment of business methods is consistent with the Delhi High Court's holding in* OpenTV Inc. v. Controller of Patents and Designs *that the business-method exclusion is absolute. Second, it examines whether the disclosure obligations the Guidelines impose on algorithm and computer-programme claims, particularly for AI, machine-learning and blockchain inventions, exceed the sufficiency standard contemplated under Section 10(4) and the Patents Rules, 2003.*

Keywords: *Business Method Patents (BMP), CRI, TRIPS, Section 3(k), USPTO, EPO*

I. INTRODUCTION

The grant of a patent is one of the gateways to intellectual property protection. Such protection is granted to inventions that meet the criteria established under the Indian patent regime. The Patents Act, 1970, as originally enacted, defined "invention" as any new and useful "art, process, method or manner of manufacture; machine, apparatus or other article; substance produced by manufacture, and includes any new and useful improvement of any of them, and an alleged invention."[1] The Patents (Amendment) Act, 2002 is the second of three amendments to the Patents Act, 1970 made to bring India's patent regime into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[2] All patentable inventions must satisfy the TRIPS conditions of novelty, inventive step and industrial

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[1] The Patents Act, 1970, No. 39, Acts of Parliament, 1970, § 2(1)(j) (India) (as originally enacted), *reproduced in Novartis AG v. Union of India*, (2013) 6 SCC 1, ¶ 44 (India).

[2] The Patents (Amendment) Act, 2002, No. 38, Acts of Parliament, 2002 (India). The other two are the Patents (Amendment) Act, 1999, No. 17, Acts of Parliament, 1999 (India), and the Patents (Amendment) Act, 2005, No. 15, Acts of Parliament, 2005 (India).

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applicability.[3] Following the 2002 amendment, section 2(1)(j) of the Patents Act defines "invention" as a new product or process involving an inventive step and capable of industrial application, and section 2(1)(ja) defines "inventive step".[4] Section 3 of the Patents Act, 1970 sets out what are not inventions, and section 3(k) specifically excludes "a mathematical or business method or a computer programme *per se* or algorithms".[5] The Joint Parliamentary Committee (JPC) rejected the absolute exclusion of computer programmes from patenting and inserted the words "*per se*". This qualifier, however, attaches only to "computer programme", which is not the main focus of this paper. It should be observed carefully that the legislature's intent is to keep mathematical and business methods excluded from patentability. This paper explores the ambiguity surrounding computer-related inventions (CRIs) and the possibility that they provide a back-door entry for business method patents (BMPs). BMPs are expressly barred in India, yet many applications are filed to obtain patents for pure business methods in the guise of technical inventions, so as to bypass the statutory exclusion. Traditionally, business methods were kept outside the scope of patent protection, but some countries are steadily moving towards a liberal BMP regime.[6] In handling these applications, the courts decide matters differently, which leads to uncertainty. Although these are matters of law and fact that differ in every case, there should be some uniformity in deciding them. Both the Patent Office and the courts have struggled with matters relating to computer programs and business methods.[7] The lack of uniformity has added to the complexity of navigating the patentability of software and business methods. This puts creators in a difficult position, makes India less favourable for business operations, and risks unhealthy competition in a developing market, leading to monopolies that hinder growth. This paper critically analyses India's stance on granting patents to business methods with reference to the CRI Guidelines, judicial approaches, the Patent Manual and procedures, and compares it with international jurisprudence. It is a doctrinal study with a limited comparative element; it is not empirical and does not examine statistical evidence.

[3] Agreement on Trade-Related Aspects of Intellectual Property Rights art. 27.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS].
[4] The Patents Act, 1970, § 2(1)(j), (ja) (India) (as amended in 2002 and 2005).
[5] The Patents Act, 1970, § 3(k) (India).
[6] Abhimanyu Ghosh, *Business Method Patents: The Road Ahead*, 11 J. INTELL. PROP. RTS. 175, 175 (2006), https://nopr.niscpr.res.in/handle/123456789/3576.
[7] *See, e.g.*, *Raytheon Co. v. Controller Gen. of Patents & Designs*, C.A.(COMM.IPD-PAT) 121/2022, ¶¶ 21–22 (Del. HC Sept. 15, 2023) (India) (Patent Office applied the novel-hardware standard of superseded guidelines); *OpenTV Inc. v. Controller of Patents & Designs*, 2023 SCC OnLine Del 2771, ¶¶ 84–86 (India) (calling for a re-look at the exclusions in section 3(k)).

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II. Legislative intent behind section 3(k)

The legislative intent behind section 3(k) of the Patents Act, 1970 is to safeguard the patent regime by preventing the monopolisation of abstract ideas and of products or processes that lack novelty, industrial application and technical effect.[8] The Patents (Second Amendment) Bill, 1999 sought to exclude "a mathematical or business method or a computer program or algorithms". The JPC was not prepared to exclude computer programmes outright and recommended the addition of "*per se*", which led to the text of the Patents (Amendment) Act, 2002.[9] The Patents (Amendment) Ordinance, 2004 proposed to narrow the computer-programme exclusion by excluding a computer programme *per se* "other than its technical application to industry or a combination with hardware", but this was not carried forward into the Patents (Amendment) Act, 2005.[10] This rejection says a good deal about Parliament's intention. The most plausible reading of this legislative history is that the legislature intended computer programmes with a technical element or advancement to remain patentable subject matter, which is why "*per se*" was added only to the computer-programme limb. The "*per se*" qualification was not intended to extend to business methods, mathematical methods or algorithms. The text supports this view: "*per se*" comes immediately after "computer programme", and it was not added after "business method" or "algorithms". The Delhi High Court in *Ferid Allani*[11] and in *Microsoft Technology Licensing*[12] identified a technical-effect requirement for computer programmes. The danger, however, is that the technical-effect requirement, which is entirely appropriate for the computer-programme limb, will be imported into the business-method limb as if "*per se*" qualified that limb as well. The issue is critical because the true objective of section 3(k) is not merely to exclude "pure" business methods but to exclude business methods unless the claim, as a whole, discloses something that is not a business method.

III. Origin of business method patents

The origin can be traced to the 1890s, when a failed business method patent gave rise to many aspects of the debate. On 20 June 1893, John T. Hicks was granted a United States patent for a

[8] *See* S. Pol, M.D. Janodia, P.C. Jagadeesh, K.M. Bhat & N. Udupa, *Business Method Patents: A Primer*, 1 J. Young Pharmacists 379, 383 (2009), https://doi.org/10.4103/0975-1483.59332.
[9] The Patents (Amendment) Act, 2002, No. 38, Acts of Parliament, 2002 (India) (inserting clause (k) in section 3); *Microsoft Tech. Licensing, LLC v. Assistant Controller of Patents & Designs*, 2023 SCC OnLine Del 2772, ¶¶ 20–22 (India).
[10] The Patents (Amendment) Ordinance, 2004, No. 7 of 2004 (India); The Patents (Amendment) Act, 2005, No. 15, Acts of Parliament, 2005 (India); *Microsoft*, *supra* note 9, ¶¶ 24–26.
[11] *Ferid Allani v. Union of India*, 2019 SCC OnLine Del 11867, ¶¶ 10–11 (India).
[12] *Microsoft*, *supra* note 9, ¶ 34.

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method of preventing theft by restaurant waiters, which a court later declared invalid for want of patentability.[13] "Business Method is a process of doing business either in traditional means or virtual means."[14] The United States became the home of this debate. Earlier, US courts recognised a "business method exception", under which a scheme for carrying on business could not be patented even if it was novel.[15] This long-standing exception was formally ended in 1998, when the Federal Circuit decided *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* and held that a data-processing system for managing a mutual-fund structure was patentable subject matter because it produced "a useful, concrete and tangible result". The court thus held that business methods were no longer to be excluded from patentability as a category.[16] A surge in business method patents followed, and the policy response came in the Leahy-Smith America Invents Act, 2011, which created a transitional post-grant review programme for "covered business method" patents and provided a prior-user defence.[17] The Supreme Court has since further delimited eligible subject matter in *Bilski v. Kappos* (2010)[18] and *Alice Corp. v. CLS Bank International* (2014).[19] Meanwhile, the European Patent Office has taken a different approach, based on the notion of "technical character", and Japan applies a test of what is an "invention". India, by contrast, starts from the statute, since Parliament has addressed business methods directly. Comparisons with other jurisdictions are therefore only aids, and the burden falls on Indian courts to interpret the language of section 3(k). India's starting point for the patentability of business methods differs from that of any other jurisdiction. In India, the debate is not about whether such subject matter should be excluded at all, but about what the statutory language means when applied to a business method implemented by a computer.

IV. Exclusion of Business Method Patents

A. Why business method patents are excluded

The exclusions rest on policy considerations. Patents protect technological advancement, and a business method is not eligible on that footing. A business method is an abstract idea or an

[13] Pol et al., *supra* note 8, at 379–80.
[14] T.K. Bandyopadhyay & Anuja Alyappan, *Business Method Patents and Indian IT Industry: An Analysis*, 2 Intell. Prop. Rts.: Open Access, no. 2, 2014 (abstract), https://doi.org/10.4172/2375-4516.1000112.
[15] *Hotel Sec. Checking Co. v. Lorraine Co.*, 160 F. 467 (2d Cir. 1908).
[16] *State St. Bank & Tr. Co. v. Signature Fin. Grp., Inc.*, 149 F.3d 1368 (Fed. Cir. 1998).
[17] Leahy-Smith America Invents Act, Pub. L. No. 112-29, §§ 5, 18, 125 Stat. 284 (2011) (codified in part at 35 U.S.C. § 273); *see generally* Pranjal Vyas, Business Method Patents: A General Overview on the Patentability in Comparative Jurisdictions: US, UK and India (2010) (unpublished manuscript), https://doi.org/10.2139/ssrn.1630766.
[18] *Bilski v. Kappos*, 561 U.S. 593 (2010).
[19] *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014).

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organisational concept which, if monopolised, would prevent honest competition and lead to unhealthy competition in the market. The justification of patents as an incentive is also questionable here, since such patents would in fact increase the cost of invention.

B. Statutory exclusion

The Indian legislature has enacted a statutory exclusion of business method patents rather than relying on general principles, and to that extent the scope of section 3(k) is clear. The US courts have instead developed tests through case law, such as the *Alice* test, to assess whether a claim falls within the US equivalent of section 3(k).[20] In India, when the substance and true nature of a claim is a business method, its true purpose cannot be disguised in the name of technological advancement.

C. Relationship with section 2(1)(ja)

Section 2(1)(ja) deals with "inventive step", which means a feature of an invention that involves "technical advance as compared to the existing knowledge or having economic significance or both" and that makes the invention "not obvious to a person skilled in the art".[21] Since an inventive step may be demonstrated through economic significance, it might appear that business methods can be patented under Indian law. It must be noted, however, that inventive step is relevant only to whether an invention meets the definition in section 2(1)(j); it is not an independent category. A business method is therefore not made patentable by its economic significance: it remains a business method and is excluded from patent protection by section 3(k).

V. TRIPS COMPLIANCE

A. Treaty provisions on business method patents

Article 27.1 provides that, "[s]ubject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application."[22] A footnote to the Article allows a Member to deem the terms "inventive step" and "capable of industrial application" synonymous with "non-obvious" and "useful". Article 27.1 also prohibits discrimination as to the field of technology. Articles 27.2 and 27.3 allow specified exclusions: inventions whose commercial exploitation must be prevented to protect *ordre*

[20] R. Chingale, *Alice and Software Patents: Implications for India*, 10 J. INTELL. PROP. L. & PRAC. 353 (2015), https://doi.org/10.1093/jiplp/jpv003.
[21] The Patents Act, 1970, § 2(1)(ja) (India).
[22] TRIPS, *supra* note 3, art. 27.1.

public or morality; diagnostic, therapeutic and surgical methods; and certain plants and animals. Article 1.1 leaves Members free to determine the appropriate method of implementing the Agreement within their own legal system and practice.[23]

B. TRIPS sets the standard and leaves implementation to Members

TRIPS does not define the word "invention", and Article 27 does not mention business methods or computer programmes. TRIPS does not set a single test of novelty, inventive step or utility that every Member must follow; it sets a minimum standard and leaves flexibility. The boundary of the word "invention" is thus left to national law. All that can be said is that an Indian exclusion must be consistent with Article 27.1 and must respect the rule that all fields of technology are covered. It can be argued that business methods are excluded as a type of subject matter and are not a field of technology at all. A WTO panel has also held that Article 27 does not prohibit bona fide exceptions dealing with problems that may exist only in certain product areas.[24]

C. Amendment of the Agreement

Article 27 has not been changed since the Agreement entered into force on 1 January 1995. The only amendment to the TRIPS Agreement is the insertion of Article 31*bis* (with an Annex) by the Protocol of 6 December 2005, which entered into force on 23 January 2017. It deals with compulsory licences for the export of pharmaceutical products and does not touch patentable subject matter.[25] Nothing in the amendment history of the treaty therefore changes the analysis of Article 27.1.

D. Implementation by India

India made three amendments, following the timetable in Articles 65 and 70 and the WTO dispute over the mailbox obligations.[26] The 2002 Act brought section 2(1)(j) into line with the Article 27.1 criteria. The 2005 Act extended product patents to all fields of technology. The statutory definition of inventive step in section 2(1)(ja), which refers to technical advance or economic significance, is India's own expansion of the Article 27.1 criterion. TRIPS compliance explains the structure of sections 2(1)(j) and 2(1)(ja), but it does not compel it; that is left to the State's policy.

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[23] *Id.* arts. 1.1, 27.1 n.5, 27.2, 27.3.

[24] Panel Report, *Canada – Patent Protection of Pharmaceutical Products*, WTO Doc. WT/DS114/R (Mar. 17, 2000).

[25] Protocol Amending the TRIPS Agreement, Decision of the General Council of 6 December 2005, WTO Doc. WT/L/641 (Dec. 8, 2005) (entered into force Jan. 23, 2017).

[26] Appellate Body Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products*, WTO Doc. WT/DS50/AB/R (Dec. 19, 1997); TRIPS, *supra* note 3, arts. 65, 70.

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VI. CRI Guidelines up to 2025

A. 2013 to 2017

The draft Guidelines of 2013 were a formal effort to bring consistency to the way CRIs were examined across the Patent Office, and the guidelines were refined over the following years. The 2016 Guidelines set out a three-stage test: first, construe the claim and identify the actual contribution; second, refuse the claim if the contribution lies only in a mathematical method, business method or algorithm; and third, if the contribution lies in a computer programme, check whether it is claimed in conjunction with novel hardware.[27] The 2017 Guidelines dropped that test and its novel-hardware requirement, and directed examiners instead to judge the substance of the claim, taken as a whole, against section 3(k). The 2017 Guidelines became the foundation on which the 2025 changes are built.[28]

B. The 2025 Guidelines

The Draft Guidelines for Examination of CRIs were released on 25 March 2025. After a period of stakeholder consultation, the final version was issued on 29 July 2025.[29] The Guidelines state that they do not constitute rule making and that the Act and the Rules prevail over them in case of conflict.[30] They are meant to reflect the case law of the Delhi and Madras High Courts, including judgments such as *Microsoft*, *OpenTV*, *Raytheon*, *Ab Initio* and *Blackberry*.[31] The Guidelines lay out a step-by-step process, complete with flowcharts and worked examples. The process starts with claim construction and then applies each limb of section 3(k) separately. A new chapter addresses emerging technologies such as artificial intelligence and machine learning, blockchain and quantum computing; it focuses on the sufficiency of disclosure and on the features that may take a claim outside the exclusion. The annexures add further illustrative examples and the relevant case law.[32]

C. Assessment of the 2025 CRI Guidelines

The 2025 Guidelines improve on the 2017 Guidelines in structure and clarity. They require examiners to identify the problem, the technical contribution and the technical features

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[27] Off. of the Controller Gen. of Patents, Designs & Trade Marks, *Guidelines for Examination of Computer Related Inventions (CRIs)* ¶ 5 (Feb. 19, 2016) [hereinafter *CRI Guidelines 2016*].

[28] Off. of the Controller Gen. of Patents, Designs & Trade Marks, *Guidelines for Examination of Computer Related Inventions (CRIs)* ¶ 4.5 (2017) [hereinafter *CRI Guidelines 2017*]; *Raytheon*, *supra* note 7, ¶ 22.

[29] Off. of the Controller Gen. of Patents, Designs & Trade Marks, Pub. Notice No. CG/F/CGPDTM/DL-07/919 (July 29, 2025).

[30] Off. of the Controller Gen. of Patents, Designs & Trade Marks, *Guidelines for Examination of Computer Related Inventions (CRIs)* ¶ 1.4 (2025), https://www.ipindia.gov.in/storage/uploads/docs-operator/7fdd559b-1ff8-4a87-8c36-033e7356b39b.pdf [hereinafter *CRI Guidelines 2025*].

[31] *Id.* annex II (List of Caselaws Related to CRIs).

[32] *Id.* ¶¶ 4.4–4.5, 5; *id.* annexes I–II.

involved, and they provide a sequence for examination. The status of the Guidelines, however, remains unchanged. They are tools and bind neither the courts nor applicants. If a statement in the Guidelines goes beyond what a High Court decision says, or interprets the law more broadly than the decision supports, the court's reasoning prevails. Each proposition in the Guidelines should therefore be treated as a hypothesis to be tested against the judgment it cites.

Two risks emerge from this approach. The first is that the Guidelines' summary of a case might be taken as the *ratio decidendi* of that case. The second is that the Guidelines, which are organised by the limbs of section 3(k), may apply technical-effect language developed for one limb to the others. Both risks can be reduced if each statement in the Guidelines cites the judgment and the specific paragraph on which it relies.

VII. Should business method patents be granted?

A. Administrative step

The Patent Office issued draft CRI guidelines in 2013, and a series of revisions followed: guidelines issued in August 2015 were held in abeyance in December 2015 pending discussions with stakeholders; revised guidelines of February 2016 added a novel-hardware requirement; and the 2017 Guidelines dropped that requirement.[33] The 2017 Guidelines state that they do not constitute rule making. Their main contribution was an approach to claim construction that sought the "substance" of a claim, which was then tested against section 3(k).[34]

B. Judicial step

The consequential developments have come from the Delhi and Madras High Courts since 2019. *Ferid Allani* (2019) held that a computer-related invention with a technical effect or contribution is not barred merely because it is based on a computer programme, and that section 3(k) must be read with the words "*per se*".[35] *Microsoft Technology Licensing* (2023) built on *Ferid Allani* and developed the technical-effect and technical-contribution reasoning for the computer-programme limb.[36] *OpenTV Inc. v. Controller of Patents and Designs* (2023), which the 2025 Guidelines cite for the business-method limb, held that the exclusion of business methods is absolute because "*per se*" does not qualify that limb, so that the technical-effect analysis developed under the European and UK "as such" provisions does not apply, and the only question is whether the application addresses a business or administrative problem and

[33] SFLC.in, *CRI Guidelines Kept in Abeyance* (Dec. 19, 2015), https://sflc.in/cri-guidelines-kept-abeyance-nosoftwarepatents/; *CRI Guidelines 2016*, *supra* note 27, ¶ 5; *Raytheon*, *supra* note 7, ¶ 22.
[34] *CRI Guidelines 2017*, *supra* note 28, ¶¶ 1.5, 4.5.
[35] *Ferid Allani*, *supra* note 11, ¶¶ 10–11.
[36] *Microsoft*, *supra* note 9, ¶¶ 32–36.

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provides a solution to it.[37] A method of giving a media item as a gift was accordingly held to be a business method.[38] The 2025 Guidelines reproduce that passage, and their own test for the business-method limb asks whether the core of the claimed invention is an administrative, commercial or business strategy, or a technical improvement to an underlying system or process that uses the business context only as a constraint.[39] The 2025 Guidelines also draw on *Raytheon Company v. Controller General of Patents and Designs* (2023), *Ab Initio Technology LLC v. Assistant Controller of Patents and Designs* (2024) and *Blackberry Ltd. v. Assistant Controller of Patents and Designs* (2024).[40]

In *Oneempower Pte Ltd. v. Controller of Patents and Designs* (Del. HC, 8 May 2023), the claim was treated as a business method despite its implementation through technical elements such as a reward and transaction processor and retail terminals.[41] In *Comviva Technologies Ltd. v. Assistant Controller of Patents and Designs* (2024), the court distinguished a business transaction from the security and authentication of a transaction, and examined the claim as a whole.[42] The most recent decision in this line, *Kroll Information Assurance, LLC v. Controller General of Patents, Designs and Trademarks* (2025), held that a peer-to-peer search and profiling invention was a computer programme *per se* and an algorithm because it offered no technical advancement to the hardware, applying the reasoning of *Blackberry*.[43]

C. An analysis

The following questions should be read together to compare the decisions: (1) what problem does the claim say it solves; (2) what is the claimed contribution over the art; (3) what work is done by generic hardware or software; (4) is there a technical effect, and is it a feature of the claim as a whole; and (5) how was the application disposed of. These questions are an analytical device, not a statutory test. Their purpose is to make visible where decision-makers characterise a claim differently.

Oneempower and *Comviva* are both instructive. They are not necessarily inconsistent, since each can be seen as applying an enquiry into the substance of the claim. They nevertheless reach

[37] *OpenTV*, *supra* note 7, ¶¶ 67, 72–73.
[38] *Id.* ¶ 81.
[39] *CRI Guidelines 2025*, *supra* note 30, ¶¶ 3.5.3, 4.5.2, 4.5.2.1.
[40] *Raytheon*, *supra* note 7; *Ab Initio Tech. LLC v. Assistant Controller of Patents & Designs*, C.A.(COMM.IPD-PAT) 26/2021 & 447/2022 (Del. HC July 30, 2024) (India); *Blackberry Ltd. v. Assistant Controller of Patents & Designs*, 2024 SCC OnLine Del 6027 (India).
[41] *Oneempower Pte Ltd. v. Controller of Patents & Designs*, 2023 SCC OnLine Del 3521, ¶¶ 13–14 (India).
[42] *Comviva Techs. Ltd. v. Assistant Controller of Patents & Designs*, C.A.(COMM.IPD-PAT) 492/2022, ¶¶ 16–19 (Del. HC Nov. 12, 2024) (India).
[43] *Kroll Info. Assurance, LLC v. Controller Gen. of Patents, Designs & Trademarks*, C.A.(COMM.IPD-PAT) 439/2022, 2025:DHC:5096, ¶¶ 30–33 (Del. HC July 1, 2025) (India).

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different results on claims that both arise in a computer-implemented commercial setting. The difference lies in how each court characterises the problem and the contribution. If the problem is a business or transactional one and the computer only automates the solution, the claim is a business method. If the problem is technical, for example secure authentication, and the solution lies in the technical means, the claim is not. The examples in the 2025 Guidelines draw the same line: a tiered fee structure for bank customers and a loyalty-rewards programme are business methods, while a new cryptographic technique for securing online banking is not.[44] Applications are filed on both sides of this line, which is why predictability depends on how consistently the line between them is drawn.

VIII. INTERNATIONAL JURISPRUDENCE

A. United States: "useful, concrete and tangible"

The statutory basis is 35 U.S.C. § 101, which lists the patentable categories and has no express business-method exclusion. The Supreme Court developed judicial exceptions for abstract ideas, laws of nature and natural phenomena.[45] *State Street* (1998) adopted the "useful, concrete and tangible result" test, which opened the door to business methods. The Federal Circuit then replaced it in *In re Bilski* (2008) with a machine-or-transformation test.[46] The Supreme Court in *Bilski v. Kappos* held that the machine-or-transformation test is not the sole test and that business methods are not categorically excluded, but it found the claimed hedging method to be an unpatentable abstract idea.[47]

Mayo Collaborative Services v. Prometheus Laboratories, Inc. and *Alice* then established the two-step framework: is the claim directed to a judicial exception and, if so, does it add an "inventive concept" beyond generic computer implementation?[48] The USPTO's current examination approach is set out in section 2106 of the Manual of Patent Examining Procedure, which incorporates its 2019 revised eligibility guidance.[49] The "useful, concrete and tangible" formulation is of historical interest and is no longer a governing test.

The comparison with India is mixed. The US enquiry at *Alice* step two is conceptually close to the enquiry into whether generic hardware adds anything. The structure, however, is different:

[44] *CRI Guidelines 2025*, *supra* note 30, ¶ 4.5.2.
[45] 35 U.S.C. § 101; *Gottschalk v. Benson*, 409 U.S. 63 (1972); *Parker v. Flook*, 437 U.S. 584 (1978); *Diamond v. Diehr*, 450 U.S. 175 (1981).
[46] *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (en banc).
[47] *Bilski v. Kappos*, *supra* note 18.
[48] *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.*, 566 U.S. 66 (2012); *Alice*, *supra* note 19.
[49] U.S. PAT. & TRADEMARK OFF., MANUAL OF PATENT EXAMINING PROCEDURE § 2106 (9th ed. Rev. 01.2024, Nov. 2024); 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019).

US law can recognise business methods as eligible in principle, whereas Indian law excludes them by text. *Alice* is therefore a comparator, not an Indian legal test.

B. European Patent Office: "technical character"

Article 52(1) of the European Patent Convention (EPC) provides for the grant of European patents for any inventions, in all fields of technology, that are new, involve an inventive step and are susceptible of industrial application. Article 52(2)(c) lists "schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers", and Article 52(3) limits the exclusion to such subject matter or activities "as such".[50] The EPO's approach is built on technical character. In *Pension Benefit Systems* and *Hitachi*, the Boards of Appeal held that claims involving technical means, first to an apparatus and then to a method, have technical character, which moved the filter from the eligibility stage to the inventive-step stage. *Comvik* requires that only features contributing to technical character be taken into account when assessing inventive step, and the Enlarged Board of Appeal confirmed that approach for computer-implemented simulations in G 1/19.[51]

The result is that a business method implemented on a computer will pass the exclusion but will often fail at the inventive-step stage, because its non-technical features, the business rules, are disregarded. The EPO is thus more permissive at the gate and stricter at inventive step. The Indian position differs in structure. The exclusion operates at the gate, as a judgment about the substance of the claim, and the substance test and the inventive-step enquiry are not neatly separated.

C. Japan: "computer software"

The Japanese Patent Act defines an "invention" as a highly advanced creation of technical ideas utilising the laws of nature. Business methods as such do not meet that definition. Software-related inventions are patentable where information processing by software is concretely realised using hardware resources, that is, where software and hardware cooperate. Following the 2002 amendment, a program is treated as a product under the Act.[52] As at the EPO, the filter is directed at whether the claim identifies a technical means. Japan is a useful comparator

[50] Convention on the Grant of European Patents art. 52, Oct. 5, 1973, 1065 U.N.T.S. 199 (as revised Nov. 29, 2000).
[51] Case T 931/95, *Pension Benefit Systems Partnership* (Tech. Bd. App. Sept. 8, 2000); Case T 258/03, *Hitachi* (Tech. Bd. App. Apr. 21, 2004); Case T 641/00, *Comvik* (Tech. Bd. App. Sept. 26, 2002); Case G 1/19, *Pedestrian Simulation* (Enlarged Bd. App. Mar. 10, 2021); *see also* EUR. PAT. OFF., *Guidelines for Examination* pt. G, chs. II, VII.
[52] Tokkyohō [Patent Act], Law No. 121 of 1959, art. 2(1), (3) (Japan); JAPAN PAT. OFF., *Examination Guidelines for Patent and Utility Model in Japan* pt. III, ch. 1.

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because its definition of invention, not a list of exclusions, performs the function that section 3(k) performs in India.

IX. Effect of granting business method patents

The reasoning behind the "*per se*" qualifier belongs to the computer-programme limb. When decisions or guidelines use technical-effect language created for that limb to decide whether a claim falls within the business-method, mathematical-method or algorithm limbs, that extension must be explicitly justified. Courts ask a similar set of questions, but they describe the problem and the contribution in different ways.

A. Status of the Guidelines

The 2025 Guidelines are not binding law. Their worked examples are persuasive within the Patent Office. The court decisions they paraphrase may be narrower than the paraphrase. When the Guidelines and the court decisions differ, applicants face an examination-stage standard that may be more or less demanding than the one the courts apply.

B. Hardware as a drafting device

Including a processor, memory or network in a claim does not by itself change its substance.[53] Applicants obtain grants where the examiner does not look beyond the form of the claim, which creates inconsistent outcomes between examiners.[54]

C. Transparency

Refusals under section 3(k) are sometimes briefly reasoned, which reduces the value of the decisions as guidance. In *Comviva*, for example, the court observed that the Controller appeared to have refused the application as a business method only because the specification and claims used terms such as "payment", "transactions" and "financial transaction".[55] The requirement that AI-related claims disclose enough adds a further source of refusal.

D. Industry impact

Businesses that can afford their own research and development centres are likely to reap more of the benefits. There is always a danger of monopoly and unhealthy competition in the market, and commentators have warned that granting business method patents in India would create a

[53] *Oneempower*, *supra* note 41, ¶ 14; *see also* Pol et al., *supra* note 8, at 383 (noting that business method applications filed in India are "mostly framed as patents for this or that 'architecture'").
[54] Bandyopadhyay & Alyappan, *supra* note 14.
[55] *Comviva*, *supra* note 42, ¶ 18.

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monopolistic situation that hinders growth.[56] This is most likely to affect small companies that are still making their way in the marketplace.

X. Conclusion

There is a substance-based method under which the courts and the 2025 Guidelines look at the claim as a whole, identify the problem and the contribution, ask what generic hardware or software adds, and look for a technical effect. At the level of method, India is moving towards consistency. At the level of application, outcomes still depend on how a decision-maker describes the problem, as the contrast between *Oneempower* and *Comviva* shows. Consistency is therefore stronger in method than in result. The business-method bar itself remains textual and absolute, and the technical-effect reasoning created for computer programmes does not extend to it. A larger sample of Patent Office decisions and post-2024 judgments would be needed to say more about predictability.

XI. Suggestions

1. Remove the ambiguity in section 3(k) of the Patents Act by clarifying that the "*per se* qualifier attaches only to computer programmes, and define terms such as technical effect, technical contribution and technical advancement.
2. Rethink the grant of business method patents for an underlying technical work by viewing the invention as a whole and determining on that basis whether its end purpose is a business method.
3. If such patents are nevertheless granted, reduce the term of patent protection for business methods.
4. Align the regime with the economic development of the country and prevent unhealthy competition in the marketplace.
5. Adopt a two-step eligibility test and integrate suitable tests laid down in international jurisprudence, if India is to take a progressive step.
6. Integrate the CRI Guidelines into the Patents Act or the Patents Rules.

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[56] Pol et al., *supra* note 8, at 383.

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